

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Parts 21 and 74 to Enable)
Multipoint Distribution Service and)
Instructional Television Fixed Service)
Licensees to Engage in Fixed Two-Way)
Transmissions)
_____)

MM Docket No. 97-217

File No. RM-9060

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COMMENTS ON PETITIONS FOR FURTHER RECONSIDERATION

CATHOLIC TELEVISION NETWORK

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SUMMARY

As the Catholic Television Network (“CTN”) explained in its own petition, the Commission should not permit MDS/ITFS excess capacity lessees to obtain booster licenses on licensed MDS/ITFS frequencies. Allowing third parties to be licensed on these frequencies would result in a *de facto* reassignment of the spectrum, contrary to the ITFS reservation for instructional purposes.

The Commission should reject Petitioners’ proposal to allow parts of an ITFS protected service area (“PSA”) to be served by booster stations used entirely for commercial purposes. Adopting this proposal would undermine the educational nature of the ITFS service. The Commission should also retain its policy of not allowing lease arrangements that would require assumption of the licensee’s obligations by an assignee or transferee. To hold otherwise would create an unreasonable restraint on the assignment or transfer of ITFS facilities. The Commission should continue to provide a 35-mile PSA to the small minority of ITFS stations that provide only point-to-point service, unless the operator still has the opportunity to expand its station for instructional uses.

CTN opposes the suggestion to allow a licensee to operate multiple response stations simultaneously on subchannels unless the response stations use the same response service area. The Commission should adopt a less stringent spectral mask for low power response stations, and amend the two-way rules to authorize the use of omnidirectional antennas for low power response transmitters.

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COMMENTS ON PETITIONS FOR FURTHER RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, the Catholic Television Network ("CTN"), by its undersigned attorneys, hereby submits these comments on the petitions for further reconsideration filed in the above-referenced docket with respect to the Report and Order on Reconsideration, 14 FCC Rcd 12764 (1999) ("Recon. Order").¹

I. The Commission Should Not Permit Non-Licensees to Obtain Booster Licenses On Licensed MDS and ITFS Frequencies.

In response to petitions for reconsideration by BellSouth and others, in the Recon. Order, the Commission adopted a policy of permitting ITFS excess capacity

¹ Public Notice of these petitions appeared on January 26, 2000. See 65 Fed. Reg. 4136 (Jan. 26, 2000). The Recon. Order resolved petitions for reconsideration that had been filed in response to the Commission's Report and Order adopting rules to permit fixed, two-way operation on ITFS and MDS frequencies. Report and Order, 13 FCC Rcd 19112 (1998) ("Two-Way Order").

lessees to be eligible to obtain booster licenses on ITFS frequencies. Any such license is subject to two conditions: (1) the lessee must obtain the written consent of the main station licensee before applying for such a booster; and (2) the lease must contain provisions that require the lessee to offer to assign the booster licenses to the main station licensee for purely nominal consideration upon termination of the lease.²

BellSouth has now asked the Commission to amend Sections 21.913(b) and (e) and 74.985(b) and (e) “to make clear that, in addition to permittees and licensees, lessees of MDS and ITFS capacity are eligible to hold booster station authorizations.”³ For the reasons set forth in its Petition for Clarification and Further Reconsideration (filed Dec. 22, 1999), CTN opposes BellSouth’s request, and urges the Commission to retract its policy permitting non-licensees to obtain booster licenses on licensed MDS/ITFS frequencies.

As pointed out in the petitions filed by CTN, the National ITFS Association (“NIA”) and the Archdiocese of Los Angeles Education and Welfare Corporation et al., licensing third parties on booster stations is essentially a reallocation of spectrum that is assigned by the original licensee, rather than the Commission.⁴ With respect to ITFS, this potentially results in a change to the instructional

² Recon. Order, 14 FCC Rcd at 12794-95.

³ BellSouth Petition for Further Reconsideration, at 15 (“BellSouth Petition”).

⁴ See CTN Petition, at 3-5; NIA Petition, at 2-5; Archdiocese of Los Angeles Education and Welfare Corporation, et al. Petition, at 3-5.

frequency reservation without the necessary administrative procedures. CTN has sought elimination of this policy based on the rationale that the Commission should find ways to encourage ITFS licensees to extend the educational uses of the ITFS spectrum rather than adopting rules which permit restrictions on ITFS licenses.

Obviously, allowing a commercial operator to be licensed on frequencies assigned to a commercial MDS operator does not present the same type of threat to the purpose for which the MDS frequencies were allocated. However, the strong policy reason for not applying this rule to ITFS suggests that it should also not be applied to its sister service MDS. Accordingly, the Commission should reject BellSouth's request for clarification, and retract its policy permitting third parties to be licensed for MDS/ITFS booster stations, for the reasons articulated by CTN, NIA, and the Archdiocese of Los Angeles Education and Welfare Corporation, et al., in their petitions for further reconsideration.

II. The Commission Should Not Exempt Sections of an ITFS Service Area from the Educational Programming Requirement.

The original Petitioners in this proceeding have again requested that the Commission eliminate the requirement that ITFS licensees provide an instructional service throughout the 35-mile protected service area ("PSA"), and to allow parts of an ITFS PSA to be served by booster stations used entirely for commercial purposes.⁵ Specifically, Petitioners state that the Commission should "allow the

⁵ Petitioners' Petition for Further Reconsideration, at 12-13 ("Petitioner's Petition").

leasing of excess capacity on boosters that serve geographic areas in which the ITFS licensee has no educational mission.”⁶

The Petitioners included this request in their Petition for Reconsideration of the Two-Way Order, and now claim that the Commission failed to address it. CTN opposed this proposal in the Petitioners’ first petition for reconsideration, and opposes it again now. As CTN pointed out previously, if this proposal is adopted, it will undermine the educational nature of ITFS and result in a *de facto* reallocation of spectrum for purely commercial use.

First, the Part 74 rules have never required an ITFS station to serve all of the area within which it may have received protection from harmful interference; and there is no suggestion in the Two Way Order that the Commission intended to change that principle. Rather, the new rules merely provide protection from harmful interference for ITFS stations equivalent to what all MDS stations receive. And, while an MDS station does receive a 35-mile PSA, there is no requirement that it actually serve all points within the service area. Therefore, specifying that Section 74.931 should apply only to an ITFS station’s actual service area is unnecessary.

Second, new Section 74.931 appears to require that wherever ITFS licensees are providing service, the existing recapture and minimum usage rules apply to transmissions on ITFS frequencies. That is, ITFS programming obligations should

⁶ Id. at 13.

be effectuated wherever ITFS frequencies are “in use.” Providing an exception for transmissions into areas where the ITFS licensee has no receive sites would eviscerate that policy and authorize purely commercial use of ITFS frequencies.

Third, the Two-Way Order is the first application of an automatic 35-mile PSA for ITFS. It makes no sense to expand the protected service area for ITFS stations, but not to impose the ITFS programming obligations on the entire area, because the instructional requirements attach to the frequencies, not the licensee. The impact of Section 74.931 should be that, if a commercial operator wants to install a booster that will use ITFS frequencies in a previously unserved area of the PSA, some instructional or cultural material should also be carried in the newly served area. The new rule could thus promote instructional use of frequencies rather than harming ITFS licensees, as the Petitioners wrongly imply. Promoting instructional service is the purpose of the ITFS spectrum reservation, and should be the goal of the ITFS rules.

III. ITFS Licenses Should Not Be Constrained by Lease Terms Requiring Automatic Assumption of an Existing Lease.

In the Recon. Order, the Commission addressed requests by BellSouth and other parties to reconsider its decision not to permit ITFS excess capacity lease terms that would require assumption of the lease obligations by an assignee or transferee. The Commission declined to change its policy because, in its judgment,

“any such lease provisions would place an unreasonable impediment on the assignment or transfer of the ITFS facility.”⁷

BellSouth has repeated its request that the Commission modify its policy of not allowing lease arrangements that would require assumption of the lessor’s obligations by an assignee or transferee.⁸ CTN opposes this request for the reasons articulated in the Recon. Order. As the Commission recognized, if an ITFS licensee wants to assign its license, it should be able to do so without being forced to find a successor willing to be bound by the excess capacity lease. Moreover, the ITFS frequencies are reserved for instructional use, and each educational entity generally has a unique mission. The students and public served by an ITFS assignee should not be bound by limits on service imposed by the prior licensee.

In any event, the Commission need not reach the merits of BellSouth’s proposal because it is well settled that reconsideration “will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken.”⁹ BellSouth’s latest request does nothing more than raise arguments already rejected by the Commission’s policy determination in the Recon. Order. Accordingly, this request should also be rejected.

⁷ Recon. Order, 14 FCC Rcd at 12792-93.

⁸ BellSouth Petition, at 3-11.

⁹ WWIZ, 37 FCC 685, 686 (1964), aff’d sub nom. Lorain Journal Co. v. FCC, 351 F.2d 824 (D.C. Cir. 1965), cert. denied, 383 U.S. 967 (1966).

IV. Point-to-Point ITFS Frequencies Should Have a Protected Service Area in Defined Circumstances.

In its initial Petition for Reconsideration, BellSouth urged the Commission to exclude the small minority of ITFS stations that provide only point-to-point service from the policy granting all ITFS stations a 35-mile PSA. The Commission declined to adopt the BellSouth proposal, instead maintaining automatic PSA protection for point-to-point operations.¹⁰ In its Petition for Further Reconsideration, BellSouth again urges the Commission to deny PSAs to point-to-point ITFS stations.¹¹

CTN opposes this request unless it is conditioned as follows. First, where an ITFS licensee holds only four channels, the PSA should apply to all four channels even if one or two are used only for point-to-point service. This provides the licensee with an opportunity to augment its instructional service and with an increased potential for leasing excess capacity airtime. Second, if the point-to-point station legitimately needs to add a receive site for additional service, and cannot do so because of interference within what would have been the 35-mile PSA, then the point-to-point licensee should have the right to require the interfering station(s) to pay for a replacement link on equivalent spectrum. This policy would ensure that other parties are not restricted by the PSA for a point-to-point station, yet, would also ensure that the ITFS operator can use the station for increased instructional purposes. The public interest is served by ensuring that all ITFS frequencies retain

¹⁰ Recon. Order, 14 FCC Rcd at 12775-76.

¹¹ BellSouth Petition, at 12-14.

their potential as an instructional resource, not by limiting this potential in the manner recommended by BellSouth.

V. The Commission Should Reject Petitioners' Proposal to Amend Sections 21.909(g)(6) and 74.939(g)(6) Unless It Also Adopts a Condition That There Is No Change in Response Service Areas.

Petitioners note that there is an apparent inconsistency between Section 21.909(a) and 74.939(a) which allow MDS/ITFS licensees to freely subchannelize, and Sections 21.909(g)(6) and 74.939(g)(6) which "limit the number of response station transmitters of a given class within a given sector that can transmit simultaneously at any given time."¹²

Petitioners request that the Commission amend the latter sections to clarify that when a licensee subchannelizes "and limits the maximum EIRP emitted by any individual response station proportionately to the fraction of the channel that the response station occupies, the licensee may operate simultaneously on *each* subchannel the number of response stations specified in its initial interference analysis."¹³

CTN opposes this recommendation as proposed by Petitioners. Once a 6 MHz channel is sub-divided into ten 600 kHz channels, or twenty 300 kHz channels, and the number of response station transmitters allowed to be simultaneously on the air increases to 10 or 20 transmitters, the new two-way rules would permit differently

¹² Petitioners' Petition, at 9-12.

¹³ Id. at 10.

shaped RSAs to be defined for each subchannel. This, in turn, would mean that the worst case aggregate interference grid point could be different, and, therefore, the interference potential to a given ITFS site could get worse.

This flaw in Petitioners' reasoning could be remedied if the condition is imposed that all subdivided channels must have the same RSA. With that condition, Petitioners' argument is valid. Accordingly, if the Commission is inclined to accept Petitioners' proposal, it should include a requirement that all transmitters operating on subchannels of the same channel must have identical RSAs.

VI. The Commission Should Allow a Relaxed Spurious Emission Specification for Low Power Response Transmitters.

In its Petition for Reconsideration, IPWireless, Inc. has requested that the Commission reconsider its rules regarding MDS/ITFS spectral masks.¹⁴ Under these rules, the out-of-band power limitations for low power (0.25 watt equivalent isotropic radiated power ("EIRP") or less) response stations are more stringent than the limitations for higher power stations.¹⁵ IPWireless proposes that the Commission eliminate this imbalance by adopting "a spectral mask for MDS and ITFS response stations that requires somewhat less suppression of out-of-band emissions at low power levels."¹⁶

¹⁴ 47 C.F.R. §§ 21.908(d) and 74.936(f)

¹⁵ IPWireless Petition for Reconsideration, at 2-3.

¹⁶ Id.

CTN generally concurs with the IPWireless position, but recommends the Commission adopt the proposed amendments with one suggested change.

IPWireless states that “the Commission should replace the requirement of 60 dB attenuation at 3 MHz from the 6 MHz channel edges with . . . attenuation to the lesser of 60 dB or $43 + 10 \log P$ dB (where ‘P’ is the licensed 6 MHz channel power level in watts).”¹⁷

The “P” definition used by IPWireless is ambiguous as it could be interpreted to refer to either transmitter power output (TPO) or EIRP. CTN suggests that the definition of “P” be changed to “the licensed 6 MHz wide EIRP in watts rather” than the “power level in watts.”

VII. Omnidirectional Response Station Transmitting Antennas For Low Power Response Transmitters Should Be Allowed By Rule.

IPWireless also urges the Commission to reconsider its policies regarding the use of omnidirectional transmitting and receiving antennas for low power response transmitters. The Commission has authorized the use of omnidirectional antennas through a blanket waiver of the existing rules, rather than through a change in those rules.¹⁸ IPWireless states that, given the importance of omnidirectional antennas, the Commission should assure subscribers and operators that they will

¹⁷ Id. at 8.

¹⁸ Recon. Order, 14 FCC Rcd at 12781.

have a protected right to operate MDS/ITFS response stations with omnidirectional antennas.¹⁹ Only a formal Commission rule can provide such assurance.

CTN concurs with the IPWireless position on this issue. The Commission should amend the MDS/ITFS rules to establish the current blanket waiver policy of permitting omnidirectional transmitting antennas for response stations with EIRPs of no greater than 0.25 watts.

VIII. Conclusion

CTN requests that the Commission take the actions proposed above for the referenced issues in the petitions for further reconsideration of the Recon. Order.

Respectfully submitted,

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¹⁹ IPWireless Petition, at 11-12.

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 10th day of February, 2000, caused copies of the foregoing "Comments on Petitions for Further Reconsideration" to be served upon the following parties via hand delivery (indicated by an *) or first-class United States mail, postage prepaid:

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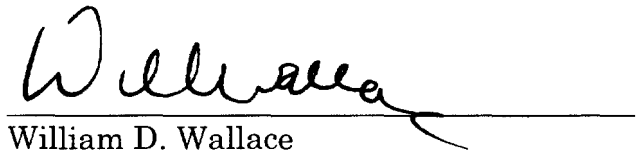
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